

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

**IN THE MATTER OF:
WAYNE ENGLAND
RESPONDENT**

)
) **DIVISION OF WATER POLLUTION**
) **CONTROL**
)
) **CASE NO: WPC07-0228**
)

**PETITION TO DIRECTOR'S ORDER AND ASSESSMENT OF
CIVIL PENALTY**

Comes now Wayne England (hereinafter the "Respondent") by and through his attorney, hereby objecting to the Director's Order and Assessment of Civil Penalty and asking for a hearing before the Water Quality Control Board and states as follows:

1. The Respondent denies that he was constructing a boat launch ramp as alleged in paragraph VIII but rather an access point for swimming and fishing. Respondent admits to the remaining allegations contained in paragraph VIII.
2. The Respondent denies the allegations contained in paragraph IX. The "cleared area" referenced in paragraph IX was present at the time of the initial telephone call from CLEFO on February 23, 2007. Respondent denies the allegations that no erosion prevention or sediment control (EPSC) measurers were present as requested on February 23, 2007. The Respondent did in fact cut a drainage ditch around the top of the property to prevent runoff into the Duck River. This was

done on February 23, 2007, as requested by the CLEFO. It should be noted that during the telephone conversation on February 23, 2007 between CLEFO and the Respondent, no specific instructions were given with respect to what kind of EPSC were required. The Respondent fully cooperated with CLEFO personnel on the March 2, 2007 visit and responded immediately when told what kind of stabilization measures they were looking for. The Respondent, on that very day, placed straw bails and seeded the area in order to comply with the CLEFO's request. In addition, the Respondent was told by Mr. Ryan Owens with CLEFO, to talk with Mr. Dan Eager in the Nashville office to get his direction with respect to how to proceed from that point. Mr. Eager instructed the Respondent to remove any loose dirt, cut the sides of the bank, and stabilize the site. The Respondent complied with this request.

3. The Respondent states that the clearing and excavation work as set forth in Paragraph X was already completed during the March 2, 2007 inspection from CLEFO and did not occur between the March 2, 2007 and the March 21, 2007 inspection as alleged in Paragraph X. Respondent denies that the straw bales were inadequate erosion control as stated in Paragraph X. In addition, the Respondent alleges that he fully complied with the erosion control measures he received from Mr. Ryan Owens and Mr. Dan Eager, TDEC employees.
4. The Respondent admits that he received the Notice of Violation (NOV) referenced in Paragraph XI. The Respondent was gathering the required information to complete the ARAP at this time.
5. The Respondent denies the allegations set forth in Paragraph XII.

6. The Respondent admits in part the allegations set forth in Paragraph XIII but denies that the application request was for a boat launch ramp.
7. The Respondent denies the allegations contained in Paragraph XIV that construction activities were continuing.
8. The Respondent admits that he received correspondence indicating that the permit application was terminated.
9. The Respondent has insufficient information to either admit or deny the allegations contained in Paragraph XVI.
10. The Respondent respectfully request that Director, Paul E. Davis extend the compliance dates contained within the Order and Assessment, specifically Paragraph XVIII section 1.,2.,3.,4., and 5. until a hearing before the Water Quality Control Board can heard. The Respondent further states that attempting to comply with the Director's Order and Assessment of restoring the altered portion of the river bank to its original condition is not possible and will in all probability result in the discharge of dirt and sediment into the Duck River. The Respondent states that the site is currently stabilized and respectfully request that the NRS reconsider the ARAP application filed by the Respondent.
11. The Respondent prays that the information contained in this Petition be considered by the Director and that fairness and equity would move the Director to waive or reduce the Civil Penalties set forth in the Order and Assessment and that the Director re-consider the corrective action plan (CAP) to attempt to restore the river bank to its original condition and leave the river bank in its current stabilized condition.

Respectfully submitted, this 19th day of November, 2007.

BY: Clayton H. Harris
Clayton H. Harris
Attorney for Respondent
808 Walker Street
Columbia, Tennessee 38401
931-388-6806

BY: Wayne England **
Wayne England
Respondent